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October 26, 2006

Philip Hogen
Chuck Choney
National Indian Gaming Commission
1441 L. Street NW
Suite 9100
Washington, DC 20005

Re: Proposed Class II Definitions and Classifications Standards
Response to Class II Vendor Questions

Dear Chairman Hogen and Commissioner Choney:

We appreciate the opportunity to provide you with additional information on the problems posed by the proposed Class II regulations. As manufacturers, we are accustomed to dealing with regulatory agencies on an individual basis. Usually, our competitive positions require us to act individually and then only in consideration of our respective companies' business plans and interests. These proposed regulations are so problematic that they have created an unusual situation and led us to prepare this joint response to your questions in the hope that our shared expertise and experience will give you a clearer picture of the full scope of harm that is threatened. Please note that this letter includes additional discussion that goes beyond your recent inquiry, but which we feel must be included in order to provide the proper context for the very important decisions that must be made as the NIGC goes forward.

We note at the outset that, unlike stand-alone "gaming machines," Class II gaming is conducted wholly in the context of a game system, which permits players to interact at an "electronic player station" to participate in a linked game, facilitated by related system components and a central server. Thus, the questions eliciting information about the number, cost or profitability of "gaming machines" are based on a fundamental misunderstanding. Further, and as set forth in the answers to your questions, development of Class II systems is not as simple as building stand alone gaming machines, but rather requires the

development of a sophisticated platform that is able to accommodate the various (and varying) restrictions imposed by the NIGC's standards at the same time as it can master the mathematical and logistical implications of linking players in the play of a common bingo game. And development of that platform is only the beginning of a process that is not completed until the platform can itself support a variety of game types. Frequently, the unfolding of the development process requires modification of the underlying platform. And all of these functions, often consuming several years' time, must be complete before internal, then external testing can begin.

The steps outlined above, traditionally, have been only the beginning of the approval process. We restate this background here to aid you in more fully understanding the economic burden of redesigning Class II systems to comply with anticipated changes in regulations – and to understand why we have expressed our unwillingness to do so if the ultimate games are likely to be wholly unattractive to players, rendering the whole process an expensive but empty exercise.

The development and manufacture of Class II technological aids is a relatively new and uncertain industry. Until recent years, that uncertainty was a barrier to the involvement of established gaming companies, particularly public corporations, or entities holding licenses in multiple jurisdictions. In earlier years, the threat (and often, the reality) of enforcement action brought by the United States Department of Justice deterred all but the bravest entrepreneurs. Only recently, as judicial decisions repeatedly affirmed the tribes' rights to employ modern technology, have larger vendors ventured into the market. Existing companies, bolstered by favorable Advisory Opinions of the NIGC general counsel, reasonably believed that difficult design and development issues problems had been resolved in a form that permitted commercial viability and did not risk regulatory sanctions. Tribes certainly enjoyed a growing ability to conduct reasonably successful operations even in areas in which Class III compacts were unattainable, or were greatly limited. In some jurisdictions, notably Oklahoma, the availability of a Class II alternative greatly contributed to the ability to negotiate Class III compacts.

The apparent progress in the Class II industry has been fundamentally threatened by the NIGC's proposed classification regulations. As proposed, the regulations would charge independent test labs with assessing and enforcing legal standards at odds with the statute, reversing prior regulations and agency opinions, and greatly crippling the viability of the industry as a whole. As manufacturers, we will have to assess whether it would be commercially reasonable to attempt to redesign the systems supporting games that satisfy the proposed new standards. As part of that evaluation, we will have to decide whether our companies persevere with the uncertainty of that standard's application, first through the independent laboratories, and then subject to long term reversal by the NIGC Chair. Some of the affected manufacturers have long and deep experience in producing gaming equipment in the Indian Class III market, and also for commercial gaming facilities throughout the world. We have extensive histories of complying with other regulatory regimes, and meeting the requirements of other agencies. We have had to do so, in order to achieve and receive the licenses necessary in the highly regulated gaming world. We do not believe that any legitimate manufacturer will accept the risk, investment and uncertainty required to continue in this market.

In addition to these considerations, we understand from the Chairman's comments at the NIGC's September 19 hearing, that the United States Department of Justice has not yet cleared the proposed regulations, and that even those tribes fully complying with these proposed regulations could still face civil enforcement actions or even criminal proceedings brought by the Department of Justice. It is therefore apparent that the certainty the regulations are purportedly designed to create cannot be achieved. The bright

line the regulations are supposed to establish between Class II and Class III gaming will continue to be blurred. It cannot be reasonably disputed that the promulgation of these regulations would lead to major litigation about their validity and to increased uncertainty and cost in the manufacture of these products.

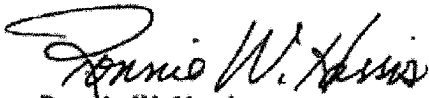
Finally we note that we each have substantial problems with the proposed technical standards which we believe would require substantial revisions of present gaming platforms and player station operations. Because the precise problems we have are not all the same, we will individually provide the details of our views on these standards in our comments that are due November 15.

As stated above, we are concerned that the National Indian Gaming Commission may not yet understand the full scope of harm that is threatened by these proposed regulations. We have therefore taken this opportunity to set aside our competitive interests to more fully brief the Commission on the likely effects of its proposed rule. Further, we wish to reinforce our previously stated assessment that the individual details of game play are perhaps less significant than the overall impact of a developing and offering games that must comply with all the limitations proposed by the rule – games that would substantially end the industry. Instead, Class II gaming as proposed to be regulated by the NIGC, will be limited to a form not known in any regulated bingo market in the world.

We have answered your questions to the best of our ability, omitting such details deemed to contain proprietary information and not appropriate for the public record. We look forward to our continued discussions with the Commission and its staff in the hope that the final regulatory product will be one that we - and more importantly, the tribes - can live with, and continue to pursue IGRA's goal of promoting tribal economic development and self sufficiency.



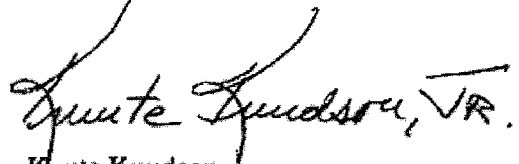
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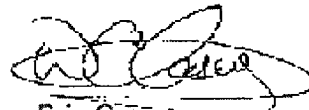
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NIGC Follow-Up Questions to Proposed Class II Gaming Definition and Classification Standards

1. What do you anticipate will be the effect of the proposed regulations on manufacturers? Tribes? Customers? States?

As proposed, the regulations will have a devastating impact on Indian gaming. Game revenue is directly related to the number of games that can be played within a set period of time. The regulations will make bingo games much slower. In fact, the minimum amount of time to play a game will be doubled or tripled. If only one-third as many games can be played, then revenue could be reduced by two-thirds. Coupled with the artificial “daub” requirements (including both the number of and spacing of “daub” prompts) and limitations on prize values, the resulting games are likely to be rejected by players, especially in jurisdictions where tribes are forced to compete against more entertaining non-Indian gaming (i.e. Florida, Texas and Alabama). Thus, the actual reduction in revenue would be even greater. This will hurt tribes economically and deprive them of any meaningful leverage in compact negotiations with state governments.

Since the games will be very expensive to produce (due to other aspects of the proposed classification regulations and the technical standards regulations), each game will need to generate a significant amount of revenue in order to be commercially viable – even more than the games on the market today, which are less expensive to produce. As proposed, it does not appear that the proposed regulations would permit us to develop commercially viable games. Thus, as indicated at the hearing on September 19, major Class II manufacturers are likely to leave the market, which could leave tribes at the mercy of “unscrupulous vendors” – repeatedly identified by the NIGC as a source of regulatory concern.

Also, as the regulations will apply to “session bingo played through an exclusively electronic medium,” even the traditional session bingo environment will be negatively affected. The session bingo market in general continues to evolve with portable and fixed-base electronic bingo devices becoming more and more the standard on which the game is played, and there is progression toward the day when electronic bingo cards will replace paper bingo cards just as paper bingo cards replaced ‘shutter cards.’ As it stands now, under the proposed regulations tens of thousands of portable electronic bingo devices used in session bingo would not be able to conform to the machine restrictions and would be rendered useless for all-electronic session bingo play.

Finally, we note that the proposed regulations would put tribes at a significant competitive disadvantage compared to electronic bingo games permitted to non-Indians under state law. For example, the electronic bingo games permitted under Alabama law require a 5x5 card, but otherwise give the operators flexibility in game design consistent with that provided by the IGRA definitions, the rules of bingo and the congressional intent for flexibility of tribal operations. Unlike tribes, commercial and charitable bingo will be able to operate with full auto-daub (one touch) and no restrictions on prize values. Similar games have been proposed in other states, such as Texas. The games that would be permitted under the proposed regulations would not be able to compete with such non-Indian bingo games. As such, the NIGC’s artificial constraints on the tribal operation of electronically assisted bingo games would invert the express promise of the IGRA to insure that tribes be permitted to conduct such gaming as is otherwise permitted by the state. It would also totally ignore Congress’ exhortation that tribes have maximum flexibility in the use of developing technology.

2. In your opinion, what are the primary changes that would need to be made to the proposed regulations?

There are many problems with the proposed classification regulations. The most significant are: (1) the failure to permit auto-daub (even though it is permitted in non-Indian markets), (2) the restrictions of the value of the game-winning prize, (3) the artificial and arbitrary time delays (two second buy-in period, two second ball releases, and two second daub periods), (4) the requirement that the bingo display fill at least 50 percent of the available screen space, (5) the requirement that the player be able to hide the entertaining display, rather than merely disabling (significant in presence of mechanical reel display) (6) the requirement that balls be released individually, rather than in sets, (7) the prohibition against different interim pattern sets within the same game, (8) the lack of any opportunity for an applicant to seek review of a lab's refusal to certify a game, and (9) the failure of the certification process to give any certainty, since a previously issued certification can be called into question at any time by the Chairman or challenged by the Justice Department. We note that these items are not listed in priority order. Each item is very important to the viability of Class II gaming. Collectively, the problems identified in this list are fatal for Class II gaming.

3. Do you currently have any machines that would meet the proposed Class II regulations?

As an initial matter, it is critical to note that the games at issue are not individual "machines." In the case of Class II electronically aided bingo games, there are many components (including electronic player stations, servers and operating software) which are linked together to allow players to play against each other in common bingo games. The bingo games proposed by the NIGC are a completely new creation and there are no game systems in existence that would meet the standards of the proposed classification regulations.

**4. Would you make machines that would comply with the proposed regulations if enacted?
Yes _____ No _____ If not, why?**

As we have testified, we have serious doubts whether it is feasible to construct bingo systems that comply with the classification regulations as proposed, and in some respects whether such games are technologically possible. We further doubt that such games, if offered, would attract players. And we are increasingly convinced that, in light of the cost of design, development and production, and in view of anticipated sharp reductions in revenue, any such bingo gaming systems would lack economic viability. If the classification regulations are adopted in the form proposed, we do not expect that we would continue to provide such games.

As a group, we support reasonable technical standards to protect the integrity of Class II gaming. It is our collective view, however, that the proposed technical standards are unsuitable. We expect to submit individual comments on that proposal, but are in agreement that the suggested standards would unreasonably burden the cost of producing Class II bingo games, and should be further reviewed in light of the prevailing industry standards, particularly those applicable to the charitable or commercial play of electronic bingo games, which increasingly pose the principal competition for tribal Class II operations. While it is theoretically possible to develop gaming systems that comply with the proposed technical standards, we do not believe that it would be feasible for us to do so, for the reasons stated above.

Taken together, the proposed regulations, if promulgated in their present form, are highly likely to destroy the commercial viability of Class II gaming. It is difficult to see how the games to be allowed would

generate enough revenue to justify the high development and maintenance costs, as well as the significant legal uncertainty that would exist under the certification process. While this will be a matter for individual decision, it is our present collective view that it would not make economic sense for any of us to remain in the Class II market if the proposed regulations are promulgated in their present form. Also, many vendors may wait for the outcome of any court challenge to the regulations before deciding on a course of action.

5. How long would it take for you to create compliant gaming machines?

This answer requires further explanation of the process for developing Class II gaming systems. The first step would be to develop a "platform" for the play of the game. In our experience, that process takes at least a year, and sometimes several years, before the regulatory constraints can be integrated into a game theme with any possible entertainment value. The next process, internal testing, takes months longer, and is a necessary predicate before submission to an independent test lab for customary approvals, much less the extensive review for Class II certification. Thus, developing a new Class II game based on the proposed regulations would take at least 18-24 months, assuming that the certification process proceeds efficiently, and that backlogs are not too lengthy. This timeframe is just to develop and certify the underlying bingo platform. But that platform development is just the infrastructure development necessary to produce the variety of games that will be presented to the players. Once the bingo platform is built, each vendor will need to develop a variety of game themes, each with different math. Each of those themes must successfully interact with regulatory constraints, and be certified to have done so, both internally and through the NIGC process. Each individual game theme would most likely take a year to create, develop, and successfully test internally. This would be a multi-million dollar investment for each vendor, and will certainly not be undertaken in a large scale before the first platform prototype is approved. Thus, the time required for developing a commercially viable product (requiring varied entertainment opportunities) would be substantially longer than merely the certification of the first game.

The overall time requirement is thus difficult to specify, and would have to account for the time necessary to create game platforms and dependent themes, achieve certification for each game iteration and only thereafter begin the manufacturing process necessary to deliver Class II gaming product to tribal gaming facilities.

While we can try to estimate the time involved in developing a new game, we do not mean to suggest that we would proceed to do so under the current proposed regulations. Simply put, it may not be worth it to invest so much capital in a product with a limited market, uncertain commercial viability and significant legal uncertainty. This is especially true for vendors that are publicly traded companies, and thus answerable to shareholders for investment decisions.

6. Do you currently have machines in play in Indian Country that conform to the NIGC's General Counsel's opinions? How many and where?

Our games comply with the IGRA, the NIGC's existing regulations and case law. All of our games were designed to follow the guidance provided by the NIGC General Counsel's opinions.

7. Do you currently have Bingo machines in play in Indian Country that generally conform to the NIGC General Counsel opinions but are one touch games? How many and where?

As noted above, we have tried to adhere to the guidance provided by the NIGC General Counsel Opinions, as well as that provided by statute, case law and regulations. As manufacturers, we must meet the directives of tribal gaming commissions.

8. If enacted, what will be the effect of the regulation changes on Class II gaming? Class III Gaming? Will the effect vary by location/region? Examples of greater/lesser impact?

The effects will vary by tribe, with those tribes that are limited to Class II gaming suffering the greatest damage. This is especially true in cases where non-Indians are permitted to engage in Class III gaming that competes with tribal gaming and, pointedly, where states have authorized (or may be expected to authorize) electronic bingo games for non-Indian operation without the artificial constraints of the proposed regulations. Even the best Class II gaming system authorized by the IGRA cannot compete with a slot machine. The games under the proposed regulations, assuming they could be built, would be even less competitive. At the NIGC's September 19, 2006 hearing, Gary Loebig of Multimedia Games provided stark evidence of how the restricted Class II games devastated revenue figures, even as compared to prior Class II operations.

The full effect of the proposed regulations is greatly affected by other tribal situations. Because tribes cannot enforce a state's good faith compacting requirement, the loss of viable Class II gaming will especially disadvantage those tribes seeking new, expanded or renewed compacts. We expect that compacting negotiations will increasingly require tribes to agree to increased revenue shares and to enter into concessions on related (and even unrelated) elements of tribal sovereignty. The process, started with the loss of the Seminole case, can be expected to accelerate and intensify, to the extreme detriment of the tribes.

Finally, the tribes can expect diminished access to capital to improve, expand or construct Class II gaming facilities. Reputable institutions are unlikely to provide funding for gaming operations that would produce marginal revenue streams. High risk, high interest sub-prime lenders will become the only choice for tribes for funding facility improvements and other capital expenditures and re-investment in their operations and their communities. It is likely that, as reputable gaming manufacturers abandon the market, tribes may find their only option for both equipment and financing to be less desirable arrangements with less desirable entities. Surely, the NIGC is familiar with this phenomenon, and would seek to prevent its recurrence.

9. What will be the effect on customers?

From our experience in gaming, we have no doubt that the games that would be permitted under the proposed regulations would not be appealing to customers. Many customers are likely to choose not to play the games at all. At best, the limited form of Class II that would be permitted under the proposed regulations might succeed in unique situation where there is no competition from other commercial gaming operations, but we believe there would be no long term economic viability for the product. And even in those few facilities currently profiting from conservative systems most closely compared to the proposed games will be forced to undertake substantial modifications to those game systems that we anticipate will destroy any viable operation. In all environments in which players have a choice, we expect that they will choose to play in non-Indian facilities, including the charitable and commercial bingo operations that will increasingly compete for the same customers.

10. Will the proposed regulation impact the win per day? To what extent? What is the basis for your conclusion?

A "win per day" model mistakenly focuses on the electronic player station rather than the underlying bingo system. The economic impact would be far more extensive than an evaluation of how much win is accumulated by each such player station in a facility. We believe, instead, that a meaningful evaluation should assess the impact on the viability of the facility as a whole. While we can quantify the decline in revenue directly attributable to the extended game cycle, we do not believe that adequately portrays the effect of the regulations.

We do not expect that players will want to play the games that would survive scrutiny under the proposed regulations. Thus, the immediate drop in revenue would be much more dramatic, and would probably result in closure of marginal operations, especially smaller facilities in geographically challenged locations. Those facilities that remained open might well choose to economize, perhaps cutting costs by constricting the numbers of expensive conversions, retrofits and replacement equipment. Finally, and even if someone were to decide to try to build the proposed game, it would be only to face a reduction in net income per day per electronic player station of 70 percent and perhaps more. While such a game might be an interesting novelty, it is hard to make a business case to pursue such a market. As noted elsewhere, the effect of this would be to force from the market the major vendors and others concerned about compliance with NIGC regulations.

11. Will the proposal affect the supply of Class II gaming devices? Will tribal casinos need to Increase/decrease their counts? If so, why and how much?

The proposed regulations are likely to force most, if not all, of the major manufacturers out of the Class II market. Assuming that the games would have any commercial viability, tribes would have fewer choices and face much higher costs, compounded by an inability to obtain financing in an uncertain market. As noted above, where tribal gaming operations face uncertain commercial viability, investment capital becomes scarce and expensive. This will affect not only the tribes' ability to convert, maintain and replace their bingo systems, but will also hinder their ability to improve, expand or construct gaming and associated facilities. Moreover, those tribes who have previously constructed Class II facilities may be forced to close, because the games permitted under the proposed regulations cannot produce adequate revenues. The secondary effect will be to force at least some tribes to choose between diverting resources from other governmental services to the maintenance of their gaming enterprises or to enter into loan agreements with those entities willing to provide unfavorable terms reflecting the commercial reality. The largest costs will be ultimately borne by tribes who cannot count on a reliable revenue stream to support any of their tribal operations.

12. What percentage of your games is sold versus leased to tribes? ____ % sold % leased ____

This is proprietary information and is not, in our view, relevant to the legal requirements for Class II gaming.

13. In your experience, what is the life expectancy of a Class II gaming machine?

Class II technologically assisted games are played via systems joining players playing against each other at electronic player stations linked in a common bingo game. For this form of gaming, we do not produce "gaming machines," as such. Further, the production of Class II technologically aided games is still a relatively new industry, and one that has been in a constant state of flux due to changing regulatory and

market requirements and changing signals from the NIGC. There is, therefore, no basis to evaluate how long a game might have remained viable in a commercially reasonable environment.

14. In your experience, how often do tribes switch out Class II gaming machines?

Once again, this question is not appropriate in the Class II context. Unlike the typical Las Vegas stand alone machine, Class II systems involve a system including linked player stations, a common server, and participation in a common game. The electronic player station is thus only one element of the gaming system, and is switched only in response to a change of platform, which is a more extensive operational decision than the simple "switching" of a stand alone gaming device.

In practice, the replacement of Class II gaming systems depends greatly on the particular gaming market and each individual tribe's gaming managers. In our experience, player demand is driving down the real world shelf life of any game. As a result, we believe that manufacturers need an economic means of developing new variations within existing platforms. The new regulations do not provide such opportunity.

15. Generally, what are the costs of acquiring new Class II machines (lease versus purchase?) (i.e., switching cost)

This is proprietary information and is not, in our view, relevant to the legal requirements for Class II gaming. Moreover, the question again reflects the inaccurate perception that switching Class II operations entails acquisition of new "gaming machines."

If, however, the Commission is interested in assessing the cost of compliance with the proposed regulations, we can provide the results of our market research prior to our scheduled November 2 meeting.

Any such cost estimate, of course, assumes that manufacturers were willing to undertake that burden, that tribes would want to operate such games, and that players were likely to want to play them. Obviously, these costs, and the estimated decline in revenues are what informs our determination that the continued production of Class II gaming systems would not be commercially viable.

16. How many of your Class II bingo machines have two video displays? How many of those have one video display that depicts an entertaining display and one video display that depicts the game of bingo?

Some vendors have many electronic player stations with two video displays, while other vendors do not have any. Overall, very few of the 50,000+ Class II electronic player stations in use today have two video displays.

17. What are the kinds of details that make gaming machines appealing? _____
Are these important?
Graphics? Yes _____ No _____
Theme of Games Yes _____ No _____
Recognizable Brand – e.g. Wheel of Fortune Yes _____ No _____
Speed of Play Yes _____ No _____
Availability of Bonuses Yes _____ No _____

Availability of Wagers Yes ___ No ___
Availability of bill acceptors Yes ___ No ___
Size and number of available prizes Yes ___ No ___
Color and looks of cabinets Yes ___ No ___
Placement of the machines on gaming floors Yes ___ No ___
Others _____

Player appeal is important for both Class II and Class III gaming. Even paper games (like instant lottery tickets offered by many states) use entertaining themes and brands to increase player appeal. All of the factors listed above are important. It also is important to remember that the features important to player appeal vary over time. For example, cashless systems have become much more popular in recent years. Thus, consistent with the intent of IGRA, tribes should have maximum flexibility to use modern technology to make their Class II games both entertaining to players and commercially profitable to the tribes.

On a more fundamental level, it is important that Class II gaming systems consistently provide a robust experience to the player. The nature of the game means that the player must be able to appreciate a real time interactive game play environment. This experience would be degraded were the player required to endure repeated delays and inexplicable extra steps before the game may proceed – as the regulations propose. At that point, player appeal would be difficult to maintain.

18. Do state/tribal compacts restrict any of the above? Yes ___ No ___ If yes, which ones?

We have not had the time or opportunity to review this completely, but to the best of our knowledge, few compacts restrict the features listed above.

19. Is there a trend toward using bonus rounds on slot machines? _____ Does this affect the amount of time it takes to play a game? _____ If yes, how long do these games take to play?

Regulations? _____ How much will it cost to do so? _____

The use of bonus rounds, like all game features, varies by market, vendor and game type. In general, bonus rounds are infrequent events and have little impact on average game speed.

20. Will you be able to retrofit your existing platforms to meet the requirements of these regulations? _____ How much would it cost to do so?

Compliance with the proposed regulations would be much more complicated than a retrofit of existing platforms, or of existing equipment. Even for existing Class II manufacturers, the first step would require the design of a Class II system platform capable of supporting the many new requirements the regulations would impose on the play of bingo. The interaction of those requirements requires extensive system and mathematical analysis, and would consume considerable time and cost. An acceptable platform is one that is capable not only of compliance but also of presenting a game that will gain player acceptance. We are not confident of surpassing that first requirement. Thereafter, equipment would have to be modified, or created anew, to satisfy the exacting requirements governing content and size of screen display and the particularly

onerous demands of the technical standards. While some equipment may be subject to retrofit, many will not, and will simply require replacement.

We are, collectively, unconvinced that the cost of redesign and production will be warranted by the greatly diminished market value of the new games. We are presently compiling the data to necessary to estimate the cost of conversion to new games – independent of the expected revenue drop in operation of such games. We will provide that information to you in advance of our scheduled November 2 meeting.

21. How long does it take to play your 3 touch games that are compliant with the NIGC opinions?_____

We have found, that a game needs to play no more than a 3-5 second cycle to be commercially viable, with limited exceptions for markets with no competition. As a result, and to the extent possible, our games are designed to achieve that timing. As we have stated above, all our games were designed with the intent of tracking the guidance provided by the NIGC opinions. The constraints required by those opinions and the practical constraints unique to each site have been significant barriers to achieving the necessary timing objective. We note that, under the proposed rules, there is no game that could be produced that would meet that timing goal, and that failure would have revenue impact beyond merely limiting the potential number of games played in a given day.